

Mayor David Browning, Seat 4  
Vice Mayor Jim Rockett, Seat 2  
Councilman Tom Goltzené, Seat 5  
Councilman Ronald. D. Jarriel, Seat 1  
Councilman Ryan Liang, Seat 3



**Town of Loxahatchee Groves**  
**Planning & Zoning Board/LPA Meeting**  
**Thursday, January 10, 2013 at 7:00 p.m.**

Central Palm Beach County Chamber of Commerce – West Office  
13901 Southern Boulevard, Loxahatchee Groves, FL33470

Chair Dennis Lipp  
Vice Chair Robin Crawford  
Committee Member Lawrence Corning  
Committee Member Keith Harris  
Committee Member Grace Joyce  
Alternate Member #1 Veronica Close  
Alternate Member #2 Byrnes Guillaume

Town Manager Mark Kutney  
Town Clerk Susan Eichhorn  
Town Planner Jim Fleishmann

The Planning & Zoning Board meets on the 2<sup>nd</sup> Thursday of each month subject to the filing of applications. It also acts as the Local Planning Agency (LPA). Items for each body are noted on the agenda.

## **MINUTES**

### **1. OPENING**

#### **a. Call to Order & Roll Call**

Chair Dennis Lipp called the meeting to order at 7:00 p.m. Present were Chair Dennis Lipp, Board Member Keith Harris, Alternate Board Members Veronica Close and Byrnes Guillaume. Board Member Grace Joyce arrived at 7:07 p.m. Vice Chair Crawford arrived at 7:11 p.m.

Board Member Corning was absent from the meeting. Also present were Town Manager Mark Kutney, Town Attorney Michael Cirullo, Town Planning Consultant Jim Fleischmann, and Town Clerk Susan Eichhorn.

b. Oath of Office- Byrnes Guillaume

Town Attorney Cirullo administered the oath of office to Alternate Member Guillaume.

**2. MINUTES**

a. Planning and Zoning Board Minutes for Approval - December 13, 2012.

**Motion: Motion made by Alternate Member Close, seconded by Alternate Member Guillaume, to approve the Planning and Zoning Board Minutes of December 13, 2012. The motion passed 4/0, with Board Member Joyce and Vice Chair Crawford not yet in attendance.**

**3. OLD BUSINESS**

a. Site Plan Approval: Project # SP 2012-01: Valley Crest (continued from November 8, 2012 and December 13, 2012 Planning and Zoning Board meetings)

Consideration of proposed Valley Crest Site Plan (SP 2012-01) for a 5.0 acre property located at 13710 Okeechobee Blvd., south side of Okeechobee Blvd., approximately 0.25 miles west of "F" Road.

Town Planning Consultant Jim Fleischmann provided the staff review, and responded to questions from the Board.

At 7:11 p.m., Chair Lipp announced that after the arrival of Vice Chair Crawford, Alternate Member #2 Guillaume, would no longer be eligible to vote.

Attorney David Coviello, on behalf of the applicant, produced a timeline document with Exhibit A through I, and distributed it to the Board Members and provided a copy to the Town Clerk for the record.

Town Planning Consultant Fleischmann advised that there was a comparison, on attached document B-7, of the regulations/standards of both the Town and Palm Beach County. The only substantive difference was in the setback requirement. Other than that the land development regulations were quite similar.

In response to Board Member Close, Town Attorney Cirullo stated that staff would provide the Town Council with all documents and material relating to the Site Plan for Valley Crest, at the time the application was presented to them.

Town Manager Kutney explained that the hearing before the Special Magistrate involved a lot of testimony, and his recollection was that there had been an agreement with the prior Code Enforcement vendor, however it had not been in writing. The former code officers could not be contacted. Board Member Close asked why the Special Magistrate had not been asked to amend his order.

Town Attorney Cirullo responded that the Special Magistrate is an independent hearing officer and the Town was a petitioner before that magistrate, and there was an order issued that no one appealed. It was final, and that was the complexity of having a case that went on for a long time, in that the magistrate worked out some mechanism to get this it cleaned up. It was not a good situation to have an ongoing business without the necessary approvals. That was the order that the two parties, the Town, and the applicant, had been travelling under.

Town Planning Consultant Fleischmann explained that the principal argument is that the Palm Beach County ULDC was in effect at the time of the violation and at the time of the Special Magistrate order, and the Special Magistrate ordered that the remedy be implemented consistent with specific sections of the Palm Beach County ULDC. He also explained that in the conditions of approval, he had asked for conditions that were consistent with the Town of Loxahatchee code.

In response to Alternate Board Member Close, Town Attorney Cirullo explained that each case has to stand on its own merit. In this matter, it is unique in that it is a case that changed from Palm Beach County to the Town.

Board Member Joyce stated that the way that she was reading this is that the violation is saying that the landscape service is in violation, and the Special Magistrate finding was to come into compliance with the Palm Beach County code at that time.; she stated that the remedy being requested this evening was not consistent with the order of the Special Magistrate. She explained that if the Town moved forward with this application, there could not be a flip-flop between the County code and the Town code.

Harold Worthington, owner's representative and tenant stated the following:

When we first got this, we appeared before the Special Magistrate and we were working with Calvin Giordano & Associates, and the code enforcement for the Town. When we went through the violation process we were given 60 or 90 days to come into compliance. We did that. Exhibit G shows that we actually had the nursery part installed. We were operating as a wholesale nursery, with the landscape service, for a period of more than 2 years. We never had any other problems with the Town. Once the moratorium ended, then the new code enforcement came in last August, and said there was no landscape service here because there were no i's dotted and t's crossed in the files they had received from Calvin Giordano. Then we got an order to appear, and went back before the Special Magistrate and went through the history. During the winter of 2010 that was the big freeze winter and a lot of our tropical plants died, our branch manager had died the previous summer, and the new manager didn't understand the importance of the issues. We made a business license request for a wholesale nursery and a landscape business.

Attorney David Coviello explained that the applicant had to go through a site plan process when he applied for a Business Tax Receipt, and could not do that earlier because of the moratorium. He explained that the wholesale nursery component was going to serve the landscape service business. The applicant wanted to be a good business and a good neighbor, and had not had any complaints. When the property was purchased the applicant did not get a business tax receipt because he did not know that was necessary. Then the moratorium was in place and during that time the applicant had worked with staff and developed a site plan. The company has not acted in bad faith.

Town Attorney Cirullo explained that when the applicant gets to final consideration of the Town Council there will be a resolution, that will rely on the conditions that come from this Board, and whatever the Town Council or staff may add, which provide some safeguards that the business will operate as per approval.

Town Planning Consultant Fleischmann commented that there were some quite detailed compliance conditions and some quite severe penalties for not complying. It was a very visible site and would be easy to monitor.

Town Attorney Cirullo advised the Board that they were talking about a site plan as opposed to an enforcement type thing, and that they should keep focus on the site plan. If there was an application that came before the Board that had no history, they would not apply the County code, but in this case, the circumstances were different. There were unique circumstances.

Town Planning Consultant Fleischmann pointed out that table B-7 in his report contained comparisons between the County code and the Town code.

At this time, Attorney Coviello reviewed the site plan with the Board. Comments were heard from the Board regarding the following:

- The process for composting. Mr. Worthington stated that a management plan was in place, and the debris would be screened.
- Variance to bring the building into compliance with the setback.
- Parking and load requirements, including handicapped. Applicant would confirm this before it gets to the Town Council.
- Landscape plan
- Seeing landscape vehicles from Okeechobee Blvd.

In response to Alternate Board Member Guillaume, Town Planning Consultant Fleischmann explained that because the code violation had referenced two sections of the County code that were in effect at the time violation, the Planning and Zoning Board recommended that the applicant comply with the County code regulations, as much as possible.

Board Chair Lipp commented that the Town should go out and find the other landscape companies that are violating the Town Code. If this applicant was held to a standard, the Town needed to be even handed.

Town Planning Consultant Fleischmann referred to the staff report, and reviewed the conditions of approval for the site plan. The following comments were provided by the Board:

Chair Lipp noted that all lighting should focus downward, as per the ULDC. He requested that any conditions desired by the Board would be set forth in a motion, after which he would then entertain a motion to approve or deny.

**Motion: Alternate Member Close recommended to the Town Council that you provide 70% pervious area, or whatever the Town Council ended up applying. The motion was seconded by Board Member Joyce. The motion passed 5/0.**

**Motion: Alternate Board Member Close made a motion to not allow them to increase the amount of impervious area on the site because it would increase the nonconformity. The motion was withdrawn.**

**Motion: Alternate Board Member Close made a motion to recommend to the Town Council that they be required to provide 100% opaque screening/landscape berm or buffer - minimum 4feet to reach a height of 6 feet within two years; she then amended the motion to say along east of the entryway and on the west side and rear property is existing vegetation as long as it provides adequate screening. Board Member Joyce seconded the motion. The motion passed 5/0.**

**Motion: Alternate Board Member Close made a motion to recommend to the Town Council that any additional building must observe the 50 foot setback, and that a Resolution containing all conditions would be recorded at the expense of the applicant. The motion was seconded by Board Member Grace. The motion passed 5/0.**

**Motion: Board Member Joyce made a motion to recommend to the Town Council that the septic tank is replaced and the drain field repaired within thirty days of approval of the site plan. The motion was seconded by Alternate Board Member Close. The motion passed 5/0.**

**Motion: Board Member Joyce made a motion to recommend to the Town Council that all parking and loading should occur on site, as shown in the site plan. The motion was seconded by Alternate Board Member Close. The motion passed 5/0.**

**Motion: Board Member Joyce made a motion to recommend to the Town Council that there be a sign that stated what the operation is, as well as the hours of operation. The motion was seconded by Alternate Board Member Close. The motion failed 2/3.**

**Motion: Board Member Joyce made a motion to recommend to the Town Council that some sort of documentation is provided to the Town annually that supports that the wholesale nursery is a primary use. She then withdrew the motion.**

**Motion: Vice Chair Crawford made a motion to recommend to the Town Council that the site plan is approved, with all of the conditions made this evening. The motion failed for lack of a second.**

Further discussion took place regarding whether the Special Magistrate could require conformance to a code that no longer existed; concerns with some of the code interpretations; concerns that the purpose of the site plan may be to facilitate the landscaping business; concerns related to the accessory use. Discussion took place as to the wording of a motion to approve or deny.

**Board Member Joyce made a motion that the Planning and Zoning Board finds the application inconsistent with Palm Beach County ULDC, which was effective as of March 19, 2008 and recommends denial of the application based on the following deficiencies:**

- 1. Is inconsistent as it pertains to outdoor storage in an AR district**
- 2. Is inconsistent with the buffering requirements**
- 3. Is inconsistent with the parking requirements as it pertains to handicapped spaces (refers to Page C-2) as handicapped space is not identified on the site plan.**
- 4. The site plan does not identify a loading space as outlined in table C - Parking and Loading requirements.**

**The motion was seconded by Alternate Board Member Close. The motion passed 5/0.**

**4. NEW BUSINESS –None**

**5. LOCAL PLANNING AGENCY**

**Old Business–None**

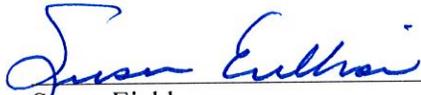
**New Business - None**

**6. COMMENTS FROM THE BOARD**

Chair Lipp requested that Town Manager Kutney review the number of times that a Planning and Zoning Board member may miss meetings. Town Manager Kutney responded that he will check on that and report back to the Town Council.

7. ADJOURNMENT

There being no further business, the Planning and Zoning Board Meeting of January 10, 2013, was adjourned at 11:15 p.m.

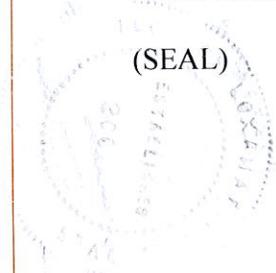


Susan Eichhorn  
Town Clerk



Dennis Lipp  
Chairman

(SEAL)



**These minutes were approved by the Planning and Zoning Board  
at its meeting of March 14, 2013.**